Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Petition for Declaratory Ruling that	)	WC Docket No. 02-361
AT&T's Phone-to-Phone IP Telephony	)	
Services are Exempt from Access Charges	)	DA 02-3184

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (Commission or FCC) Public Notice[1] seeking comment on the October 18, 2002 Petition for Declaratory Ruling filed by AT&T. OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. § 153(37). OPASTCO urges the Commission to deny AT&T's petition, and to declare that interstate phone-to-phone calls that utilize Internet Protocol (IP) technology should be subject to both originating and terminating interstate access

[1] *Wireline Competition Bureau Seeks Comment on AT&T's Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Public

charges in order to provide local exchange carriers (LECs) with lawful and adequate compensation for the use of their facilities.

II. LECs must be adequately compensated for the use of their facilities regardless of the specific technology used during interstate transport

AT&T's petition argues that because it transmits certain long distance voice calls via IP technology, such calls "must" be exempt from terminating access charges.[2] However, there is no dispute that, if the same phone-to-phone call was transported without the use of IP technology, both originating and terminating access charges would apply. The petition acknowledges that AT&T compensates originating LECs through interstate access charges for the costs incurred by the LEC at that end of a call.[3] Yet the petition fails to explain how an interexchange carrier's (IXC's) use of IP technology to transport a voice call reduces a LEC's cost of terminating that call in any way.

The reason for this lack of explanation is because the functions performed by both the terminating LEC and the originating LEC for phone-to-phone IP calls are no different than the access functions they perform for regular long distance calls transported without IP technology. The petition itself implicitly acknowledges this:

> For example, a phone-to-phone IP call will travel over the public switched network to a local gateway where it is converted to Internet Protocol and then routed over the Internet backbone to a terminating gateway, where it is converted back to voice and sent over local exchange facilities to the called party.[4]

Thus, the fact that IP technology is used to transport the call does not reduce in any way

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Notice, DA 02-3184 (rel. Nov. 18, 2002).

[2] *In the Matter of AT&T Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket 02-361, Petition of AT&T (fil. Oct. 18, 2002), p. 24 (Petition).

[3] *Ibid.*, p. 19.

[4] *Id.*, pp. 10-11.

the LEC's costs of either originating or terminating the call.

The Commission itself has acknowledged that the costs incurred by LECs when providing interstate access services for phone-to-phone IP traffic are no different than the costs incurred by other calls, and therefore it may be appropriate for access charges to apply. The Commission's 1998 Report to Congress[5] stated:

> [T]o the extent we conclude that certain forms of phone-to-phone IP telephony services are "telecommunications service," and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and **therefore impose the same burdens on the local exchange as do other interexchange carriers**, we may find it reasonable that they pay similar access charges.[6]

As noted previously, AT&T recognizes that originating access charges apply to its phone-to-phone IP service. By so doing, it acknowledges the obligation to fairly compensate the originating LEC for the use of its facilities. Logically, since the costs of the terminating LEC also remain unchanged, these carriers must be allowed reasonable compensation for their access services as well.

Carriers have been digitizing voice signals for many years. The use of IP technology specifically for phone-to-phone voice calls is analogous to the development in years past of fiber optic, microwave, and satellite technology to accomplish long-haul voice transport. AT&T asserts that it made "large investments" to upgrade Internet backbone capabilities in order to facilitate IP telephony.[7] No doubt IXCs also made large investments to enable transport via fiber optic, microwave, and satellite technology when those mediums became viable. Yet the adoption of these new technologies, however

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[5] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd., 11501 (1998) (1998 Report).
[6] *Id.*, para. 91 (emphasis added).
[7] Petition, p. 5.

beneficial, did not justify depriving LECs of reasonable compensation for their access services. Similarly, the adoption of IP technology should not absolve IXCs of their responsibility to adequately compensate LECs for their access to the local loop.

The petition attempts to portray local end-user tariffs as adequate compensation for LECs' termination of long distance calls.[8] However, these local rates are not based on the cost of performing access functions for interexchange voice traffic. The exemption from access charges that enhanced service providers currently enjoy must not be twisted into a means for IXCs to avoid providing LECs with just and reasonable compensation for the use of their networks for voice call origination and termination.

The petition also makes the baseless assertion that "nonpayment of access charges has no adverse effect on universal service" and results in "no cognizable harm to incumbents or to any objective of" the Telecommunications Act of 1996 (the Act).[9] Rural LECs rely on access charges for a significant portion of their revenue requirement. Providing IXCs with below-cost access to the local loop results in revenue decreases for rural LECs, which in turn forces them to delay network upgrades,[10] impairs their customer service efforts, and places upward pressure on local rates for telephone service. The Commission must explicitly reject the petition's clear conflicts with sections 254 and 706 of the Act.

In essence, AT&T is asking the Commission to endorse a situation which ultimately requires consumers to pay more for their access to the local loop in order to allow IXCs to pay below cost for their access, contrary to the public interest and the

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[8] *Id.*, p. 32.
[9] *Id.*
[10] These upgrades are often necessary for the provision of advanced services, which section 706 of the Act

goals of the Act. The petition's request for discriminatory treatment that favors a specific technology is simply an attempt to buttress arbitrage, and is entirely unjustified. In its 1998 Report, the Commission emphasized that it is "critical" for the Commission to "sustain universal service into the future," and that it "should avoid creating regulatory distinctions based purely on technology."[11] Accordingly, regular terminating access charges, as well as originating charges, should apply to phone-to-phone IP calls.

III. The petition's false claim that interstate access rates are "above-cost" and "inefficient" is based upon outdated determinations made prior to the implementation of significant access charge reform

Throughout the petition, AT&T claims that interstate access charges are "inefficient" and "above cost."[12] To make this allegation, AT&T reaches to an outdated Notice of Proposed Rulemaking issued by the Commission in 1996.[13] However, the access charges in place at the time of the Notice cited by the petition were far higher than those in effect today for both rural and non-rural LECs. Significantly, AT&T was a party to the subsequent comprehensive access charge reform process for price cap carriers[14] and participated extensively in the access charge reform proceeding for rate-of-return carriers.[15] These two access charge reform proceedings removed what the Commission

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was designed to encourage.

[11] 1998 Report, para. 98.

[12] Petition, pp. 2, 6, 8, 10, 23, 24, 25, 27, 33.

[13] *Id.*, p. 25 (citing *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd. 21354, para. 214 (1996)).

[14] *See*, *generally, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd. 12962 (2000).

[15] *See, generally, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local*

believed to be implicit support built into the interstate access regime and shifted recovery of those revenues to explicit support mechanisms. As a result, there can be no doubt that interstate access charges are now an efficient cost recovery mechanism with rates that are at, or in some cases below, actual costs.[16] For AT&T to base its argument upon access rates that no longer apply only serves to illustrate the petition's lack of merit.

Moreover, the petition states that the so-called "above cost" and "inefficient" access charges would "distort and disrupt Internet services."[17] However, the petition offers no evidence that LEC recovery of costs related specifically to phone-to-phone IP calls through today's drastically lower access charges would in any way impede the continued development of the Internet. Therefore, given that AT&T's assertion regarding the nature and impact of access charges are patently untrue and unsubstantiated, the Commission should deny the petition.

IV. There are pronounced differences between a local call to an ISP and a phone-to-phone IP conversation from the consumer perspective

In an attempt to avoid the fact that phone-to-phone IP calls are indistinguishable to end users from traditional long distance calls, AT&T vainly attempts to equate the characteristics of a call to a local Internet Service Provider (ISP) to a long distance voice call that happens to use IP technology for long-haul transport.[18] When consumers connect with a local ISP through a computer, the ISP's facilities use IP technology to transmit and retrieve data to and from one or more servers placed in various locations. In

Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd. 19613 (2001) (MAG Order).

[16] Some high-cost rate-of-return carriers are especially likely to be subject to below-cost access charges under the MAG Order.

[17] Petition, p. 2.

the case of phone-to-phone IP calls, neither party must do anything equivalent to establishing a connection with a local ISP. The petition itself admits[19] that originating users simply perform standard "1+" dialing, or at most dial an additional number as is commonly required for dial-around long distance voice service. Customers who receive the call simply answer a ringing phone. Clearly, there is no analogy here to booting up a computer, launching software, and establishing a connection with a local ISP. A phone-to-phone IP call is no different from the end user's perspective than a traditional long distance call, and should therefore be treated as such with regard to the application of interstate access charges.[20]

V. Conclusion

An IXC's use of IP technology for a phone-to-phone call in no way changes the costs incurred by either the originating or terminating LEC. Providing IXCs with below-cost access to the local loop through end-user rates harms the ability of rural LECs to serve customers and conflicts with sections 254 and 706 of the Act. The petition's repeated claim that access rates are "above cost" and "inefficient" ignores previous access reform decisions that have resulted in today's radically lower, cost-based access rates. And the petition offers no evidence that the application of these rates would in any way impede the development of the Internet. In addition, end users experience no difference between traditional long distance voice service and voice calls that may be transported via phone-to-phone IP technology. Therefore the Commission should deny the petition, and find that both originating and terminating access charges apply for

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[18] *Id.*, pp. 24.

[19] *Id.*, pp. 18-19.

[20] The Commission affirmed in its 1998 Report that "the classification of a service under the 1996 Act

phone-to-phone IP calls.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

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depends on the functional nature of the end-user offering." 1998 Report, para. 86.

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 18th day of December, 2002, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
WC Docket No. 02-361
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David W. Carpenter
Sidley Austin Brown & Wood
Bank One Plaza
10 S. Dearborn
Chicago, IL 60603

David L. Lawson
Julie M. Zampa
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
900 Route 202/206 North
Bedminster, NJ 07921

Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20544

<u>VIA E-MAIL</u>

Qualex International
qualexint@aol.com